

EXHIBIT 13

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI**

ASARCO LLC,

Plaintiff,

NL INDUSTRIES, INC., et al.,

Defendants.

)
)
)
)
)
)
)
)

Case No. 4:11-cv-00864 JAR

**DECLARATION OF JOHN HAWKINS IN SUPPORT OF UNION PACIFIC'S
STATEMENT OF UNCONTROVERTED MATERIAL FACTS
IN SUPPORT OF SUMMARY JUDGMENT**

I, John Hawkins, pursuant to the provisions of 28 U.S.C. § 1746 certify as follows:

1. My name is John Hawkins. I am over 21 years of age. I am of sound mind and capable of making this declaration. I have personal knowledge of the facts recited in this declaration based on publicly available records and the corporate records of Union Pacific Railroad Company ("Union Pacific"). I submit this declaration in support of Union Pacific's Statement of Uncontroverted Material Facts in Support of Summary Judgment.

2. I have worked for Union Pacific since 1984 and am presently the Director of Real Estate Operations. My responsibilities include electronic data management, property engineering and appraisal services, and system/process consultation. I have 25 years of experience in the Real Estate Department in various capacities. One of my responsibilities is evaluating available records (both publicly available and internal Union Pacific records) to determine whether Union Pacific owns or has ever owned particular parcels. I have conducted multiple ownership studies of this type, researching property records on behalf of Union Pacific.

3. I took all the steps necessary to determine Union Pacific's ownership interest in any railroad right-of-way ("ROW") in proximity to the mining-related locations at issue in this case. Neither Union Pacific nor any of its corporate predecessors ever owned or operated on any property within 23 miles of the West Fork Mine or Sweetwater Mine. Neither Union Pacific nor any of its corporate predecessors ever owned or operated on its property in the Glover Smelter site.

4. The West Fork and Sweetwater mine sites are located in the western portion of Reynolds County, Missouri. The nearest Union Pacific rail line is the DeSoto Subdivision, which runs through Iron and Wayne Counties, which are east of Reynolds County.

5. A search of Union Pacific and publicly available records revealed no evidence that Union Pacific or its predecessors ever owned any property or conducted any operations in Reynolds County. To determine this, I reviewed Union Pacific valuation maps and industry publications, including Interstate Commerce Commission ("ICC") filings, and numerous years of Poor's and Moody's annual reports. I also consulted with the Union Pacific Tax Department. It is my understanding that the records I consulted and relied upon have been produced in this case. From my review and evaluation, Union Pacific's right-of-way ("ROW") maps and records show no Reynolds County properties were ever owned by Union Pacific or any of its predecessors.

6. My review of publications and ICC documents relating to the Missouri Southern Railroad Company ("Missouri Southern") shows that Missouri Southern was the only railroad that operated in Reynolds County, but it was abandoned and dismantled in 1941. I have attached to my Declaration true and correct copies of the pertinent Missouri Southern ICC documents.¹

¹ Ex. 13A, Interstate Commerce Comm'n Proceedings on Missouri So. R.R. Co. Abandonment, Jan. 10, 1940 (UPRR-001815-1816); Ex. 13B, Interstate Commerce Comm'n Proceedings on Missouri So. R.R.

These records further support that there was no historic relationship between the Missouri Southern Railroad and Union Pacific.

7. The Glover Smelter site is located in Iron County, Missouri. My research regarding this site considered relevant Union Pacific valuation maps, property records, and agreement records at this location.

8. The Union Pacific line nearest to the Glover Smelter is the De Soto Subdivision, which is separated from the Glover Smelter by State Highway 49. Union Pacific owns no property in the vicinity of the Glover Smelter west of State Highway 49. I have attached to my Declaration true and correct copies of a 2008 track map and 1971 pipeline and wire line agreements executed by Asarco to enable its utilities to cross Union Pacific's DeSoto Subdivision ROW.² These confirm that the Union Pacific ROW in the vicinity of the Glover Smelter is 100 feet wide, and that Union Pacific's ROW is physically separated from the Smelter property by the highway.

9. The reviews conducted above considered both active and abandoned ROW in Reynolds and Iron Counties relative to the West Fork, Sweetwater, and Glover Smelter sites. There is no record that Union Pacific or any of its corporate predecessors own or ever owned property within these sites.


Co. Abandonment, Apr. 9, 1941 (UPRR-000896-900); Ex. 13C, Application of Mo. So. R.R. Co. to Abandon Line from Leeper, Mo., to Bunker, Mo., Dec. 20, 1940 (ASARCOSEMO00032104-32129).

² Ex. 13D, Track Map, St. Louis Service Unit, De Soto Subdivision, Rev'd Oct. 2, 2008 (UPRR-001376); Ex. 13E, Wire Line License Between Mo. Pac. R.R. Co. and Am. Smelting and Refining Co., Sept. 2, 1971 (UPRR-000459-467); Ex. 13F, Pipe Line License Between Mo. Pac. R.R. Co. and Am. Smelting and Refining Co., Sept. 2, 1971 (UPRR-000468-476).

10. The Union Pacific corporate records that I reviewed in connection with this declaration are kept in the regular course of business, record events at or near the time at which they occur, and were made by persons with personal knowledge of the events.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 14, 2014.



John Hawkins
Director of Real Estate Operations